

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Chapter 13

Elizabeth Wesson, *pro se*,

Case No. 10-49061

Debtor.

Judge Thomas J. Tucker

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**OPINION AND ORDER GRANTING *IN REM* RELIEF
FROM THE AUTOMATIC STAY
AND WAIVING THE PROVISION OF FED.R. BANKR.P. 4001(a)(3)**

This case is before the Court on a motion filed by US Bank National Association, as Trustee for MASTR Asset Backed Securities Trust, 2006-HE2, by and through its attorneys, Trott & Trott, P.C., entitled MOTION FOR RELIEF FROM THE AUTOMATIC STAY AND CO-DEBTOR STAY AND ENTRY OF ORDER WAIVING THE PROVISION OF FRBP 4001(a)(3) AND REQUEST FOR IN REM RELIEF (Docket # 11, the “Motion”) with respect to the property located at 18749 Autumn Ln, Southfield, MI 48076-5306 and legally described as:

**Lot 160, Cranbrook Village No. 2, according to the plat thereof, recorded in
Liber 78, Pages 24 and 25 of Plats, Oakland County Records**

Parcel ID# 24-11-203-005

After the Motion was filed, the Court dismissed this Chapter 13 case, on April 5, 2010 (Docket # 16). The Court retained jurisdiction, despite the dismissal, to hear the Motion, at least to the extent the Motion was not rendered moot by the dismissal of the case. *See* Order filed March 31, 2010 (Docket # 13).

The dismissal of this case rendered moot to the extent it sought a termination of the automatic stay and/or of the codebtor stay, because any such stays terminated automatically when the case was dismissed. *See* 11 U.S.C. §§ 362(c)(1), 362(c)(2)(B). The dismissal of this

case did not render moot that part of the Motion that seeks relief under 11 U.S.C.

§ 362(d)(4)(B), commonly referred to as “in rem” relief. Accordingly, the Court held a hearing on the Motion, on April 22, 2010. Present at the hearing were the Movant’s counsel; the Debtor Elizabeth Wesson; and counsel for the Chapter 13 Trustee.

Based on the facts presented in the Motion and at the April 22 hearing, which are undisputed and/or admitted by the Debtor, and based on the state court orders filed by the Movant after the April 22 hearing, on April 23 and 26, 2010 (Docket ## 27, 28), the Court finds and concludes as follows.

First, there is and was no codebtor stay under 11 U.S.C. § 1301, with respect to the Debtor Elizabeth Wesson and the property at issue. This is because the bankruptcy Debtor, Elizabeth Wesson, is not liable on any debt to the Movant. She is merely one of the occupants of the property at issue. As a result, the codebtor stay did not arise under § 1301(a) in this case, nor did it arise in the new Chapter 13 bankruptcy case that Ms. Wesson filed after this case was dismissed (Case No. 10-52310).

Second, the property at issue was sold at sheriff's mortgage foreclosure sale on May 5, 2009; and the redemption period under state law expired on November 5, 2009 without redemption. As a result, Movant now owns the property at issue. While the Debtor Elizabeth Wesson questions this conclusion, she cannot validly dispute this conclusion in light of the state court decisions already made. And in any event, Ms. Wesson admits that she has no ownership interest in the property whatsoever. She merely occupies the property, with no legal right to do so. (And she claims that she or one or more of her co-occupants of the property want to buy the property from the Movant, if Movant can prove to her satisfaction that it validly owns the

property.)

Third, Bankruptcy Code § 362(d)(4)(B) does not apply. Among other possible reasons for this conclusion is the fact that the Movant is not, and does not claim to be, “a creditor whose claim is secured by an interest in” the real property at issue, as required for the statute to apply. *See* 11 U.S.C. § 362(d)(4). Rather, Movant owns the property.

Fourth, although § 362(d)(4)(B) does not apply here, the Court nonetheless has authority to grant the “in rem” relief Movant requests under 11 U.S.C. § 105(a), which permits the Court to issue any order that is “necessary or appropriate . . . to prevent an abuse of process.” *See In re McCray*, 342 B.R. 668, 669-70 (Bankr. D.D.C. 2006)(stating that “Congress gave no indication in enacting [11 U.S.C.] § 362(d)(4) that it intended to prevent bankruptcy courts from employing 11 U.S.C. § 105(a) . . . to enter orders, when necessary or appropriate to prevent the harm arising from abusive filing” and relying on § 105(a) to grant *in rem* relief to a creditor who held “no claim secured by an interest in the subject property,” but rather claimed “to own the property pursuant to a foreclosure sale (which by definition would extinguish the security interest it had in the property”)); *cf. In re Henderson*, 395 B.R. 893, 901-02 (Bankr. D.S.C. 2008)(granting the creditor *in rem* relief based either on its motion, which “did not specifically plead for relief under 11 U.S.C. § 362(d)(4),” but was nevertheless sufficient to state a claim for relief under this provision, or *sua sponte* under § 105(a))(citing *McCray*, 342 B.R. at 670); *Gonzalez-Ruiz v. Doral Financial Corp. (In re Gonzalez-Ruiz*, 341 B.R. 371, 384-85 (1st Cir. 2006)(holding that the bankruptcy court did not err in *sua sponte* granting *in rem* relief from the automatic stay to a creditor because “[s]ection 105(a) of the Bankruptcy Code authorizes a bankruptcy court to grant *in rem* relief in connection with granting relief from the stay under

§ 362(d) in circumstances where an ordinary stay relief order will not be effective to protect a secured lender's rights as demonstrated by the prior history of the parties and the property"); *In re Price*, 304 B.R. 769, 773 (Bankr. N.D. Ohio 2004)(Pre-BAPCPA)(imposed *in rem* relief from the automatic stay under 11 U.S.C. § 105(a)).

The *in rem* relief provided in this Order is necessary and appropriate to prevent an abuse of process. Such abuse of process would be the filing of one or more new bankruptcy cases by Elizabeth Wesson, or possibly other occupants of the property at issue, that may give rise to an automatic stay against Movant's efforts to use the state court and its process to obtain possession of the property. (Ms. Wesson has filed a new bankruptcy case already, as noted above). Such use of the bankruptcy system is an abuse that should be prevented. As mere occupants of the property, with no ownership rights in the property and with no legal right to possession of the property (all of which has been determined by the state courts already,) the Debtor Ms. Wesson and her co-occupants cannot *legitimately* file one or more bankruptcy cases just to try to obtain the benefit of the automatic stay, in order to delay their eviction from the property.¹ Such use of the bankruptcy system in these circumstances has been, and would in the future be, an abuse of process.

For these reasons,

¹ During the April 22 hearing, for example, Ms. Wesson admitted that her purpose in filing her two bankruptcy cases – what she hopes to accomplish – is to delay her eviction from the property while she tries to persuade the Movant to sell the property to one or more of her co-occupants. As the Court ruled from the bench during the April 22 hearing, Ms. Wesson cannot possibly hope to confirm a Chapter 13 plan that purports to force the owner of this property to sell it to any of the occupants, or to anyone, if the owner does not want to do so. Because she cannot possibly hope to accomplish such a forced sale by filing bankruptcy, filing her bankruptcy cases does not serve any legitimate, bankruptcy-related purpose, and therefore does not serve any proper purpose.

IT IS ORDERED that the Motion (Docket # 11) is granted to the extent of the relief provided by this Order, and otherwise is denied as moot.

IT IS FURTHER ORDERED that to the extent it applies at all, the automatic stay is terminated as to Movant, in this case and in Case No. 10-52310, with respect to the property located at 18749 Autumn Ln, Southfield, MI 48076-5306, to allow Movant to commence or continue to exercise and enforce its federal and/or state law rights to the property.

IT IS FURTHER ORDERED that Movant is granted *in rem* relief, under 11 U.S.C. § 105(a), with respect to the subject property, so that Movant may proceed with its state law remedies as to the property despite any subsequent bankruptcy filings during the next two years after the date of the entry of this Order by Elizabeth Wesson or by any person now or in the future claiming an interest in the subject property.

IT IS FURTHER ORDERED that this Order is effective immediately upon entry by this Court notwithstanding the provision of Fed.R.Bankr.P. 4001(a)(3).

Signed on April 26, 2010

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge